



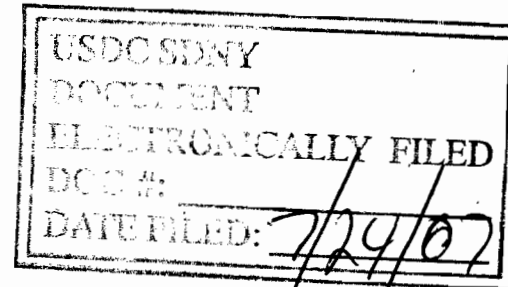
United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

July 23, 2007

BY FACSIMILE (with permission)

The Honorable Gerard E. Lynch
United States District Judge
Southern District of New York
500 Pearl Street, Room 910
New York, New York 10007-1312



Re: *Valentin v. The Bronx-Lebanon Hospital Center, et al.*,
No. 07 Civ. 2940 (GEL)

Dear Judge Lynch:

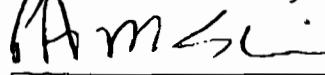
This Office represents Third-Party Defendant Morris Heights Medical Center (the "Government") in the above-referenced medical malpractice action, which was removed from New York State Supreme Court. On May 25, 2007, the Government moved to dismiss the third-party complaint on the ground that the state court lacked jurisdiction over the third-party complaint, and that this Court did not upon removal acquire jurisdiction lacking in the state court. *See generally Barnaby v. Quintos*, 410 F. Supp. 2d 142 (S.D.N.Y. 2005) (describing doctrine of derivative jurisdiction). Upon further review, it appears that this Court acquired subject matter jurisdiction upon removal, because the case was removed pursuant to 28 U.S.C. § 2679(d)(2). *See Osborn v. Haley*, __ U.S. __, 127 S. Ct. 881, 896 (2007) (explaining that removal under section 2679(d)(2) creates a "significant federal question . . . at the outset"). Accordingly, the Government respectfully withdraws its motion to dismiss. As contemplated in the Government's May 30, 2007 letter, the parties to the third-party complaint will submit a proposed scheduling order for the remainder of discovery within five business days.

Thank you for your consideration.

Respectfully,

MICHAEL J. GARCIA
United States Attorney

By:


PETER M. SKINNER
Assistant United States Attorney
Telephone: (212) 637-2601

* SO ORDERED

GERARD E. LYNCH, U.S.D.J.
7/24/07

Hon. Gerard E. Lynch

July 23, 2007

cc: (by facsimile)

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